IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1429 OF 2004

Smt. Venubai Gangadhar Shinde & Anr. Appellants

Versus

Shri Narhari Mahadu Shinde & Ors. Respondents

Mr.P.B.Shah for appellants

CORAM : P.V.KAKADE, J.

DATE : 12th JULY, 2005.

P.C.:

1. This is an appeal preferred against the judgment and order passed by Addl. District Judge, Nashik dated 26.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Sinnar dated 31st March,2001 decreeing the plaintiffs' suit for perpetual injunction in respect of Gat No.154 to the extent of their 1/2 share situated at

west of Gat No.154 old Survey No.41/3 and survey no.90/10.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs filed the suit for perpetual injunction against the defendants restraining the defendant no.1 from obstructing and interfering his possession in the suit land and 1/2 share in the well water of which he was in use. The defendants challenged the suit on various grounds including that they were in possession of the suit property and the lands were standing in their names for several years in revenue records.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved their lawful possession over disputed property to the extent of the suit land and it was also held that the plaintiffs were entitled for perpetual injunction against the defendants to the extent of suit land. Accordingly suit came to be decreed. The appeal

was carried to the District Court. The learned Addl.District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the findings recorded by the trial judge were legal and correct and appeal came to be dismissed. Hence the present appeal.

4. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The only question sought to be raised was with regard to the so-called admission by the plaintiffs regarding possession in the property to the extent of 29R, and therefore, it was originally alleged that the plaintiffs had become owner by adverse possession. However, the statement to that effect was withdrawn and amendment came to be allowed and thus the statement which was said to be an admission on behalf of the plaintiffs was deleted from the plaint. The learned counsel for the appellants sought to rely upon the so-called amendment and submitted that even if the said statement was deleted from the pleadings, the statement amounts to an admission and therefore, it has to be read in evidence. However, in this regard it must be noted that this particular grant of amendment dealing with the said

statement was neither challenged pending the suit nor was it challenged in the first appeal and therefore, it must be noted that amendment relates back to the date of filing of the suit and therefore, no benefit can be sought of the situation by the defendants, especially when it was not agitated before the first appellate court.

5. Once this position is made clear, there is absolutely no reason why the concurrent findings recorded by both the courts below should be disturbed so far as lawful possession of the plaintiffs to the extent of suit property is concerned, as it is based on available evidence, which is not rebutted on behalf of the defendants.

6. Be as it may, the fact remains that there is no substantial question of law involved in this appeal and as such the appeal stands dismissed.

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